

Remarks/Arguments

Claims 1, 4-14 and 16-20 are pending after entry of the present Amendment.

Rejections under 35 U.S.C. § 103(a):

Claims 1, 4-14, and 16-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,473,894 to Shrader et al. (hereinafter “Shrader”) in view of U.S. Publication No. 2003/0093508 to Li et al. (hereinafter “Li”) in view of U.S. Publication No. 2002/0107680 to Duggan et al. (hereinafter “Duggan”) in view of U.S. Publication No. 2002/0133603 to Mitomo et al. (hereinafter “Mitomo”).

For at least the reasons provided below, it is submitted that the combination of the cited prior art fails to raise a *prima facie* case of obviousness against the subject matter defined in independent claims 1, 9, and 17.

Antedating Submission:

With reference to the issue that the evidence submitted is insufficient to establish diligence from a date prior to the effective date of the Li reference (i.e., October 18, 2001) to a date of constructive reduction to practice (i.e., the filing of the present application on January 4, 2002), the Applicants are submitting herewith a set of documents to establish the diligence.

As stated in MPEP section 2138.06, “*an actual reduction to practice or a constructive reduction to practice is established by the filing of either a U.S. application or reliance upon priority under 35 U.S.C. 119 of a foreign application*” and “*Conception was established at least as early as the date a draft of a patent application was finished by a patent attorney on behalf of the inventor*”, it is sufficient to establish diligence by a showing that the attorney of record diligently worked in the preparation and filing of the claimed application prior to the effective date of Li.

- As already established in the Declaration under Section 1.131 executed by the inventors and submitted by the Applicants in response to an earlier Office Action (copy of which is enclosed as Exhibit 1), a request to prepare and file a patent application for the claimed invention was transmitted to the attorney of record on or about May 23, 2001.

- In response to the request an invention disclosure meeting was held on or about August 3, 2001.

- A first draft of the application was sent to the inventors on or about September 4, 2001, as indicated by a letter that accompanied the first draft, a copy of which is attached as Exhibit 2.

- A final draft of the application was sent to the inventors along with the formal papers on or about November 2, 2001, as indicated by the letter enclosed herewith as Exhibit 3.

- The formal documents for the application were executed on December 7th and 17th, respectively, as evidenced by the Declaration and Assignment of record.

The Applicant hereby declares that all statements made herein of Applicant's own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Based on the above evidence presented, Applicants submit that sufficient evidence has been provided to indicate that attorney of record has worked diligently to

reduce the invention to conceptual practice as stated in MPEP section 2138.06. Based on this argument, the Applicants respectfully request that Li be removed as a reference.

The comments submitted regarding the other cited references of prior art, as noted in response to the previous office action, are herein incorporated by reference. Thus, the remaining teachings by the prior art, as noted in the rejection are submitted to be lacking the substance to form a proper obviousness rejection. The Applicants respectfully request that the office withdraw the rejections of the pending claims.

A notice of allowance is respectfully requested. If the Examiner has any questions concerning the present Amendment, the Examiner is kindly requested to contact the undersigned at (408) 774-6905. If any additional fees are due in connection with filing this Response, the Commissioner is also authorized to charge Deposit Account No. 50-0805 (Order No. SUNMP019). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,
MARTINE PENILLA & GENCARELLA, LLP


Jayanthi Minisandram
Reg. No. 53,330

710 Lakeway Drive, Suite 200
Sunnyvale, CA 94085
Telephone (408) 774-6905
Facsimile (408) 749-6901
Customer No. 32291